

# Morgan Lewis

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February 26, 2019

**VIA ECF**

Honorable Deborah A. Batts, U.S. District Judge  
U.S. District Court for the Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: *Simon J. Burchett Photography, Inc. v. A.P. Moller Maersk A/S*,  
Case No. 1:19-cv-01576-DAB (previously Case No. 1:18-cv-12134-JSR)

Dear Judge Batts:

We represent A.P. Moller Maersk A/S ("APMM"), the defendant in the above-referenced action. APMM is a Danish company with its principal place of business in Copenhagen, Denmark. Plaintiff has not effected service on APMM.<sup>1</sup> Our limited entry of appearance (ECF No. 6) and this letter are submitted *solely* to comply with our obligations under Local Civil Rule 1.6. APMM reserves all of its defenses, including its defense with respect to personal jurisdiction.

On January 26, 2019, Plaintiff initiated an action against APMM by filing a First Amended Complaint in Case No. 1:18-cv-12134-JSR pending before Judge Rakoff. A comparison of the two pleadings reveals that the allegations in this case are essentially the same as the allegations in the case before Judge Rakoff. On February 11, 2019 – before APMM was served in the case before Judge Rakoff, the court entered the following Order:

This case was scheduled for an initial pretrial conference on February 7, 2019 at 11:00 AM. No one appeared on behalf of any of the parties. The Court, thinking that there may have been a misunderstanding, repeatedly called and emailed plaintiff's counsel, who did not respond. Accordingly, it appears to the Court that plaintiff has abandoned the case. The case is hereby dismissed without prejudice to being reinstated if plaintiff's counsel provides the Court, within three (3) business days of the signing of this Order, with a sworn affidavit indicating why he has not appeared or responded to the Court's communications.

Case No. 1:18-cv-012134-JSR, ECF No. 16. It does not appear that Plaintiff's counsel submitted a sworn affidavit as required to reinstate his case. Instead, on February 20, 2019, Plaintiff filed this new action against APMM. In response to the question on the Civil Cover Sheet, "***Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY,***" Plaintiff's counsel incorrectly stated "***No.***" Case No. 1:19-cv-01576-DAB, ECF No. 4.

Respectfully,

  
Zoe Phillips

cc: Counsel of record (via ECF)

<sup>1</sup> While Plaintiff purported to serve APMM in New Jersey on February 22, 2019, Plaintiff's counsel knows that APMM is a Danish company with its principal place of business in Copenhagen, Denmark, and must be served via The Hague Convention. See Case No. 1:18-cv-012134-JSR, ECF No. 12 (Summons directed to APMM in Denmark).